

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUBY ROBINSON CO., INC.,
Plaintiff,

v.

KALIL FRESH MARKETING, INC., *et al,*
Defendants.

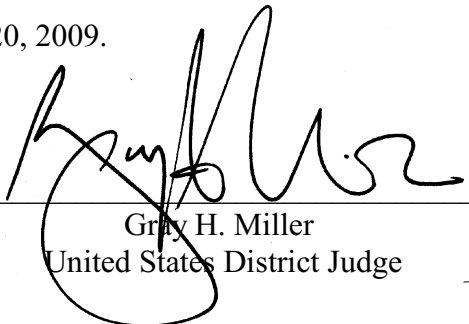
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CIVIL ACTION H-08-199

ORDER

Pending before the court is Sun Valley Produce Co., Inc.'s and Classic Salads LLC's motion for order of stay pending appeal. Dkt. 327. Upon consideration of the motion, the responses, the applicable law, and the stage of the proceedings in this case, the motion is **DENIED**. A discretionary stay pending appeal is appropriate when the movants can establish each element of a four-part test: (1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest. *See Arnold v. Garlock, Inc.*, 278 F.3d 426, 438–39 (5th Cir. 2001); *In re First S. Sav. Ass'n*, 820 F.2d 700, 709 (5th Cir. 1987). The movants failed to address this test in their motion, thus neglecting their burden to show the court that a stay is appropriate. For this reason, combined with the extremely progressed nature of the proceedings, the “prompt payment” provisions of PACA, and the substantial harm to the remaining parties that would result, the court finds a stay unwarranted. Thus, the motion is **DENIED**.

Signed at Houston, Texas on November 20, 2009.



Gray H. Miller
United States District Judge